

APR 22 2010

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ATTORNEY DOCKET NO.: BOE01 082REMARKS

Claims 1-18 are pending in the subject application.

Independent Claims 1 and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,502,881 (“Gaydoul”). The examiner’s assertion that “figure 4’s depiction alone anticipates the structure claimed” (O.A. dated 2/2/201, ¶ 7) is clearly improper in view of the Office’s binding case law.

Independent Claims 1 and 8 both contain the limitation that the nozzles are arranged in the nozzle head radially inclined outwardly at an angle of inclination and are inclined in circumferential direction in the forward direction. The Final Office Action asserts that this limitation is found in FIG 4 of Gaydoul. However, it is improper for the examiner to rely solely on FIG. 4 for the basis of this rejection. “When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.” MPEP 2125. This is because “ordinarily drawings which accompany an application for a patent are merely illustrative of the principles embodied in the alleged invention claimed therein and do not define the precise proportions of elements relied upon to endow the claims with patentability.” *In re Olson*, 212 F.2d 590, 592 (CCPA 1954). This restriction on the use of patent drawings applies not only to measurements but also applies to relative dimensions such as comparing the pitches of a screw. *See Ex Parte Frenk*, 2009 WL1763974 (Bd. Pat. App. & Interfer.). Thus the examiner’s reliance solely on FIG. 4 without reference to a description in the specification of FIG 4 to interpret what is shown in the patent drawing is clearly improper.

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Moreover the examiner's interpretation of FIG. 4 is not consistent with other figures and description in the specification. A written description that the nozzles are inclined in the radial direction is found at least three places in the 881 specification:

In FIG. 9 only one flat section jet nozzle 21 is shown with its spray axis 24 inclined at an angle α with respect to the axis of rotation 25 of the nozzle head 20, which axis is at right angles to the surface. (Col. 3 lines 61-65).

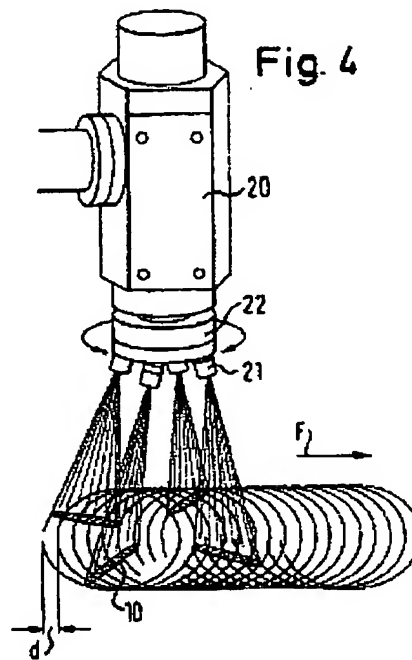
The axes of the nozzles 21 each are inclined at approximately 15° with respect to the vertical nozzle head axis 25. (Col. 5, ll. 4-5 with respect to FIG. 7).

As may be gathered from FIG. 10, the spray axis 24a of nozzle 21a is inclined at an angle α of 15° with respect to the axis 25 of the nozzle head 20. (Col. 5, 63-66).

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FIG 4, as reproduced below, is consistent with the written description identified above, and the drawings of FIGs 7, 9 and 10, showing that the nozzles (21) are inclined in the radial direction:



The examiner's assertion that FIG. 4 also shows that the nozzles are inclined in the circumferential direction in the forward direction of rotation is without support in the written description. There is no written description that the nozzles are inclined in the circumferential direction and without that, the examiner's interpretation of a perspective view of a patent figure as showing nozzles that are inclined both radially and circumferentially direction is improper.

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Additionally, the examiner's current rejection based on FIG. 4 is contrary to the Office's admission in the initial Office Action that "Gaydoul does not disclose nozzles inclined in circumferential direction of the rotation of the nozzle head." (O.A. dated 12/31/2008, p. 4, ll.6-7). Having successfully traversed an obviousness rejection over Gaydoul, it is manifestly unfair to the applicant for the Office to change positions, without explanation, and assert an anticipation rejection that is clearly improper in light of established law. Reconsideration and allowance of Claims 1 and 8 are respectfully requested.

The remaining claims ultimately depend from Claims 1 and 8 and are therefore in condition for allowance by virtue of dependency alone and without addressing the additional patentable elements thereof. Reconsideration and withdrawal of the rejection of the remaining claims is respectfully solicited

Applicant respectfully submits that Claims 1-18 are in condition for allowance. Accordingly, an early and favorable reconsideration of this application is respectfully requested.

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The Office is requested and authorized to charge any fee associated with this application to Deposit Account No. 04-1679 to Duane Morris LLP.

Respectfully submitted,



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